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# BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

In the matter of:

MIKE GLEASON, Chairman

WILLIAM A. MUNDELL JEFF HATCH-MILLER

KRISTIN K. MAYES GARY PIERCE

DONNA MARIE SHUROT, a single

Respondent.

individual, CRD #1443423

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Arizona Corporation Commission
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DOCKET NO: S-20572A-08-0009

NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO

CEASE AND DESIST, ORDER FOR

ADMINISTRATIVE PENALTIES, ORDER OF REVOCATION AND FOR OTHER

AFFIRMATIVE ACTION

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent DONNA MARIE SHUROT ("SHUROT") has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq*. ("Securities Act").

I.

# **JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

#### RESPONDENT

- 2. SHUROT was at all relevant times a resident of Gilbert, Arizona. SHUROT may be referred to herein as "Respondent."
- 3. Respondent was at all relevant times a registered securities salesman in Arizona affiliated with Banc of America Investment Services, Inc. ("BAI") in Scottsdale, Arizona since on or about January 7, 2005, CRD #1443423, until BAI discharged Respondent on October 16, 2006. Respondent was registered as a securities salesman in Arizona in association with Morgan Stanley DW Inc. from August 21, 1992 to January 7, 2005. Respondent is currently licensed with the Arizona Department of Real Estate as a salesperson since April 30, 2007.

III.

# **FACTS**

# A. BAI's Discovery of the Transfer of Customer Funds to Respondent's Accounts.

#### **Customer A**

- 4. On or around September 1, 2006, BAI initially learned that customer funds were being deposited into Respondent's accounts when a BAI sales assistant noticed a movement of funds from the estate of Customer A's account at Morgan Stanley to Respondent's personal BAI account. At the time, Respondent had been on medical leave for several months.
- 5. On August 30, 2006, BAI received a check dated August 29, 2006, in the amount of \$6,712.20 from Morgan Stanley. The check was delivered with a handwritten memo on a distribution form from Customer A's IRA, which stated as follows: "Please make my check payable to Bank of America and mail as follows Bank of America Investment Services 16468 N. Scottsdale Rd #250 Scottsdale, AZ 85254, for credit to [Respondent's BAI account number]," directing the deposit into Respondent's personal BAI account. Customer A had passed away on April 29, 2006. On September 1, 2006, BAI reversed the transaction, calculated interest, and returned the funds to Customer A's account.

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6. BAI's discovery of the September 1, 2006 event prompted BAI to conduct further review of Respondent's activities. Based on that review, the firm discovered two other events related to customer funds and Respondent's accounts:

#### **Customer B**

7. A check dated December 15, 2005, for \$58,000, drawn on a bank account belonging to BAI's Customer B, made payable to Bank of America, was directed for deposit into Respondent's personal BAI account. The funds were then removed by Respondent from her BAI account and transferred to her IRA account at BAI. On October 19, 2006, BAI credited Customer B's account \$59,862.42, an amount that reflected all principal and interest from December 15, 2005.

### **Customer C**

8. On or about June 20, 2006, a form was submitted to Customer C's bank to transfer the liquidated balance of Customer C's bank account to Respondent's BAI account. Customer C was also a BAI customer. The transaction was never completed because of missing paperwork. Customer C experienced no loss of funds as a result of the transaction.

# B. Respondent's Termination, Admissions, and Explanations.

- 9. Based upon BAI's review and the recommendation of Bank of America, N.A. Corporate Security, BAI terminated Respondent on October 16, 2006. BAI commented on Respondent's termination Form U-6 the following reason for her discharge: "Management loss of confidence."
- 10. Respondent denied use of the customer funds deposited to her accounts, claiming the transfers for her benefit were in error. However, when questioned about the transfers during the course of an investigation by the Financial Industry Regulatory Authority (FINRA), Respondent admitted that the handwriting on the transfers of funds from Customer A's and Customer B's accounts to Respondent's accounts is Respondent's handwriting. Respondent claimed that she could not remember the circumstances of her signing the documents that resulted

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in the mistaken transfers. However, Respondent failed to identify or disclose the unauthorized transfers until after they were discovered by BAI. When questioned by FINRA concerning the transactions, Respondent claimed that the customers' funds were deposited to her own accounts in error.

11. Respondent was not authorized to transfer the customers' funds to her personal accounts. Such transfers were in violation of Respondent's dealer's and the Commission's rules.

IV.

# VIOLATION OF A.R.S. § 44-1991

# (Fraud in Connection with the Offer or Sale of Securities)

- 12. In connection with the offer or sale of securities within or from Arizona, Respondent directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. Respondent's conduct includes, but is not limited to, the following:
  - a) Failing to disclose that customers' funds were to be deposited into an account controlled by Respondent; and/or
    - b) Unauthorized transfers of customer funds to Respondent's personal accounts.
  - 13. This conduct violates A.R.S. § 44-1991.

V.

# **REMEDIES PURSUANT TO A.R.S. § 44-1962**

# (Denial, Revocation, or Suspension of Registration of Salesman; Restitution, Penalties, or other Affirmative Action)

14. Respondent's conduct is grounds to revoke Respondent's registration as a securities salesman with the Commission pursuant to A.R.S. § 44-1962. Specifically, Respondent has:

- a) Violated A.R.S. § 44-1991, within the meaning of A.R.S. § 44-1962(A)(2).
- b) Committed dishonest and unethical practices in the securities industry as defined in A.R.S. § 44-1962(A)(10), for:
  - 1. Unreasonable delay in the delivery of securities or funds to the extent that the salesman is in a position to control or direct the delivery of the securities or funds, within the meaning of A.A.C. Rule R14-4-130(A)(1); and/or
  - 2. Making unauthorized use of securities or funds of customers or converting customer securities or funds for personal benefit, within the meaning of A.A.C. Rule R14-4-130(A)(16).
- 15. Respondent's conduct is grounds to assess restitution, penalties, and/or take appropriate affirmative action pursuant to A.R.S. § 44-1962. Specifically, Respondent has committed dishonest and unethical practices in the securities industry, as defined in A.R.S. § 44-1962(A)(10), for unreasonable delay in the delivery of securities or funds to the extent that the salesman is in a position to control or direct the delivery of the securities or funds, within the meaning of A.A.C. Rule R14-4-130(A)(1); and/or making unauthorized use of securities or funds of customers or converting customer securities or funds for personal benefit, within the meaning of A.A.C. Rule R14-4-130(A)(16).

# VI.

# REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

- 1. Order Respondent to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. §§ 44-2032 and 44-1962;
- 2. Order Respondent to take affirmative action to correct the conditions resulting from her acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032 and 44-1962;

- 3. Order Respondent to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 4. Order Respondent to pay the state of Arizona administrative penalties, pursuant to A.R.S. § 44-1962;
- 5. Order the revocation of Respondent's registration as a securities salesman pursuant to A.R.S. § 44-1962; and
  - 6. Order any other relief that the Commission deems appropriate.

# VII.

# **HEARING OPPORTUNITY**

Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. If Respondent requests a hearing, Respondent must also answer this Notice. A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at http://www.azcc.gov/divisions/hearings/docket.asp.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-3931, e-mail <a href="mailto:lhogan@azcc.gov">lhogan@azcc.gov</a>. Requests should be made as early as possible to allow time to arrange the accommodation.

VIII.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if Respondent requests a hearing, Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at http://www.azcc.gov/divisions/hearings/docket.asp.

Additionally, the respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Pam Johnson, the attorney of record.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 9 day of January, 2008.

Matthew J. Neubert

Director of Securities